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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,817	03/22/2006	Shahram Mihan	LU 6133 (US)	4987
34872	7590	06/02/2008	EXAMINER	
Basell USA Inc. Delaware Corporate Center II 2 Righter Parkway, Suite #300 Wilmington, DE 19803			TESKIN, FRED M	
			ART UNIT	PAPER NUMBER
			1796	
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			06/02/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/572,817	Applicant(s) MIHAN ET AL.	
	Examiner Fred M. Teskin	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20060911</u> . | 6) <input type="checkbox"/> Other: ____. |

The preliminary amendment of March 22, 2006 has been entered. Claims 1-3 and 5-8 are currently pending and under examination herein.

Claims 1-3 and 5-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is internally inconsistent in first reciting ethylene as an alternative olefinic monomer (i.e., "selected from ethylene, propylene and 1-butene...") but subsequently specifying the polymerization be carried out at "an ethylene concentration of at least 10 mol %" (see claim 1 at line 2 and *cf.*, penult. line). Where the selected olefinic monomer is propylene or 1-butene, it is unclear how the stated ethylene concentration can be observed during the first polymerization. If ethylene must be present during the first polymerization, its recitation as an alternative olefinic monomer causes confusion as to the scope of the claims. Clarification and appropriate correction are required.

Claims 3 and 6 each provide the limitation to "the reactor tube". There is insufficient antecedent basis for this limitation in said claims or in any claim from which they currently depend.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29

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USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-3 and 5-8 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 of copending Application No. 10/572,816. Although the conflicting claims are not identical, they are not patentably distinct from each other because they differ merely in matters of scope. In fact, the copending claims encompass embodiments wherein a first polymerization of olefinic monomer selected from ethylene, propylene and 1-butene in a first loop reactor may be carried out under the same polymerization conditions as in the present invention, including the same average solids concentration and ethylene concentration. *Cf.*, instant claim 1 with claims 1, 2 and 7 of the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The prior art made of record and not relied upon is considered pertinent to applicants' disclosure.

EP '388 is pertinent to a process for producing bimodal polyethylene resins in two slurry loop reactors in series, the first reactor being fed with a feed having an ethylene content of at least 70 wt % (based on weight of diluent) and wherein a slurry of polyethylene in the diluent is formed at a solids content of at least 30 wt%, based on weight of the diluent. Example 2 and Table 3 report a first reactor solids content of 45 wt % with an ethylene/isobutane ratio in the first reactor of 0.85. Product take-off from the loop was carried out from the first reactor in Example 2, indicating a continuous product discharge.

Harlin is pertinent to multi-step polymerization in a cascade of at least one slurry reactor and at least one gas phase reactor, connected in series (note col. 7, lines 18+). Kufeld et al is pertinent to the provision of a reactor wall surrounding the impeller within a slurry loop reactor that is greater in diameter than the general diameter of the piping forming the reactor (note col. 4, lines 55+).

Claims 1-3 and 5-8, as presently understood, are deemed free of the prior art.

The following is a statement of reasons for the indication of allowable subject matter: Polymerizing olefinic monomer(s) selected from ethylene, propylene and 1-butene in a first loop reactor under the conditions of temperature, pressure, average solids concentration in the reactor and ethylene concentration as specified in applicants' claim 1 is not taught nor adequately suggested in the available prior art.

Any inquiry concerning this communication should be directed to Examiner F. M. Teskin whose telephone number is (571) 272-1116. The examiner can normally be reached on Monday through Thursday from 7:00 AM - 4:30 PM, and can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu, can be reached on (571) 272-1114. The appropriate fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Fred M Teskin/

Primary Examiner, Art Unit 1796